



The Comptroller General
of the United States

Washington, D.C. 20548

Ayer

Decision

Matter of: Schuelke & Associates, Inc.

File: B-231389

Date: September 2, 1988

DIGEST

Protest based on alleged solicitation defect which is apparent prior to bid opening date must be filed before that date.

DECISION

Schuelke & Associates, Inc., protests the Veterans Administration's (VA) award of a contract to Specialty Surgical Instrumentation (SSI) under invitation for bids (IFB) No. IFB-534-53-88 for 60 watt and 40 watt surgical laser systems. Schuelke's protest concerns the 60 watt laser system, with the firm asserting that the VA: (1) improperly rejected Schuelke's bid; (2) improperly accepted SSI's higher priced bid; and (3) used unduly restrictive specifications. We dismiss the protest.

We will not consider the first two issues the protester raises. The agency rejected Schuelke's bid because the descriptive literature submitted with the bid did not show that Schuelke's equipment met the IFB's specifications. In its comments on the agency report, Schuelke admits that its equipment did not conform to the specifications, and further admits that the agency correctly determined that the awardee's equipment met the specifications. Consequently, these issues are moot.

Schuelke's remaining contention is that the IFB's specifications were unduly restrictive because they were copied from the awardee's descriptive literature, and they "are vague, meaningless, unnecessary, confusing or impracticable for a practical evaluation of a medical laser system's overall performance." Schuelke, which first raised the matter in its comments on the agency report, maintains that the restrictive nature of the specifications was not apparent until receipt of the awardee's literature with the VA's protest report, so that the issue is timely raised

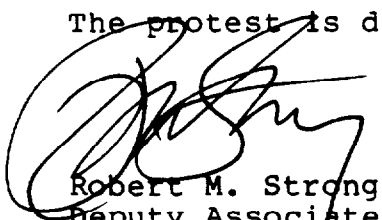
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under section 21.2(a)(2) of our Bid Protest Regulations, 4 C.F.R. Part 21 (1988), since it was filed within 10 working days afterwards. In this respect, where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements. Arndt & Arndt, B-223473, Sept. 16, 1986, 86-2 CPD ¶ 307.

We will not consider the issue because we find it untimely under section 21.2(a)(1) of our Regulations, which requires that a protest alleging an apparent solicitation impropriety shall be filed before bid opening. (Section 21.2(a)(2) applies to all other protests.) Obviously, Schuelke had access to the specifications prior to bid opening and, in our view, it was incumbent on the firm to determine at that point whether they were or were not too restrictive for Schuelke's purposes. Moreover, the protester's argument that it first recognized the specification problems when it received the awardee's literature is inconsistent with its assertion that it was concerned about the specifications from the outset and that it tried unsuccessfully to get the agency to discuss them before bid opening. Since Schuelke's protest of this issue was not filed in our Office until well after bid opening, it is untimely.

Schuelke suggests that, in any event, its protest raises an issue that should be considered under the significant-issue exception to our timeliness requirements in section 21.2(c) of our Regulations. We disagree. The significant-issue exception is for an untimely protest that raises a matter of widespread interest to the procurement community. The alleged restrictiveness of the specifications involved here does not meet that standard.

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel